

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Amilcar Chuc, Luis Velazquez, and)	Case No. 1:22-CV-5257
Joel Quintanilla Madrid)	
)	
Plaintiffs,)	
v.)	
)	
Bell Contracting NY Inc. and Arif Bashir)	
)	
)	
Defendants.)	

Notice of Filing

To: **Arif Bashir**
 Defendant
 5609 7th Avenue, Apt. 2
 Brooklyn, New York 11220

PLEASE TAKE NOTICE that on March 8, 2023, I caused to be filed **Plaintiffs' Motion for Alternative Service**, copies of which are hereby served upon you.

/s/ **Daniel I. Schlade**

Justicia Laboral LLC
Daniel I. Schlade (Reg. No. 5916697)
Attorney For Plaintiff
Justicia Laboral, LLC
6232 N. Pulaski, #300
Chicago, IL 60646
773-550-3775
Email: dschlade@justicialaboral.com
danschlade@gmail.com

Certificate of Service

I, Daniel I. Schlade, an attorney, certify that I caused this **Notice and Plaintiffs' Motion for Alternative Service** to be filed with the Clerk of the Court on March 8, 2023, and I certify that I served this notice and documents by mailing copies to the attorneys/parties of record at their listed addresses below, and depositing the same in the U.S. Mail in Chicago on March 8, 2023, with proper postage prepaid:

Arif Bashir

Defendant

5609 7th Avenue, Apt 2

Brooklyn, New York 11220

/s/ Daniel I. Schlade

Justicia Laboral LLC

Daniel I. Schlade (Reg. No. 5916697)

Attorney For Plaintiff

Justicia Laboral, LLC

6232 N. Pulaski, #300

Chicago, IL 60646

773-550-3775

Email: dschlade@justicialaboral.com

danschlade@gmail.com

**IN THE UNITED STATES DISTRICT COURT
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Amilcar Chuc, Luis Velazquez, and)	Case No. 1:22-CV-5257
Joel Quintanilla Madrid)	
)	
Plaintiffs,)	
v.)	
)	
Bell Contracting NY Inc. and Arif Bashir)	
)	
)	
Defendants.)	

**Plaintiff's Motion for Alternative Service pursuant to Federal Rule of Civil Procedure 4
and NY CPLR §308**

Now come Plaintiffs ("Plaintiffs"), by attorney Daniel Schlade, and in support of their motion for alternative service upon Defendant Arif Bashir ("Defendant"), state:

1. On September 2, 2022, Plaintiffs filed this action alleging they are owed unpaid overtime and other wages under the Fair Labor Standards Act ("FLSA"). Dckt. 1.
2. Plaintiffs were former employees of Defendants.
3. Upon filing of this suit, Plaintiffs issued summonses to Defendants and placed them for service. Service was attempted nine (9) times for Defendant Arif Bashir at 5609 7th Avenue, Apt 2, Brooklyn, New York 11220. Plaintiffs' special process server was unable to serve the Defendant on September 15, 2022; November 15, 16, 19, and 22; and February 2, 3, 11 and 17. See attached Exhibit A – Affidavits of Non-Service; Ex. A is incorporated herein.
4. Plaintiffs' counsel has run skip traces for Defendant which yielded the same addresses that Plaintiffs' counsel previously had in his possession and tendered to the special process server. Repeatedly, the special process server faced lock gates at the address and was unable to confirm any occupancy or the residency of Defendant.

5. Plaintiffs' counsel was able to obtain a phone number for Defendant Arif Bashir (who is the principal of Bell Contracting NY Inc.), and called on February 27, 2023. During that call, Defendant Arif Bashir confirmed his address (which is the same address where the process server was sent) and said that he was willing to make arrangements to accept service of process. He asked for a return phone call from Plaintiffs' counsel on February 28, 2023, so that he could check his calendar and make appropriate arrangements.

6. Pursuant to the above, Plaintiffs' counsel called Defendant Arif Bashir on February 28, 2023, to which Defendant did not answer. After that, Plaintiffs' counsel has texted Defendant twice at his phone number, on March 1 and March 3, 2023, in order to make arrangements for personal service. To this date, Defendant Arif Bashir has neither called back nor answered the texts.

7. Service of Defendant Arif Bashir has not been possible despite Plaintiffs' counsel and the special process server's innumerable attempts. Defendant Arif Bashir has full knowledge of the Complaint against him in this case, has spoken to Plaintiffs' counsel about this matter, and all of this notwithstanding, refuses to be served.

8. Federal Rule 4(e)(1) provides:

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made;

9. New York Civil Practice Law and Rules (CVP) Chapter 8, sections 308 (4) and (5) states the following regarding alternative service of process on defendants:

4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or

usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;

5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.

10. Plaintiffs' counsel and the SPS have exercised due diligence in attempting to serve Defendant Arif Bashir; Plaintiffs' counsel and the SPS have made a diligent inquiry as to the location of Defendant; reasonable efforts to serve Defendant have been unsuccessful. Attached as Exhibit B is Plaintiffs' Counsel's Affidavit; Ex. B is incorporated herein.

11. Plaintiffs have attempted service at the Defendant's location. Further, Plaintiffs' counsel tried calling Defendant Arif Bashir to facilitate the service of process. Defendant is not making himself available for service in the state of New York.

12. Accordingly, Plaintiffs request leave to serve Defendant Arif Bashir as follows:

a) Serve by first class mail to 5609 7th Avenue, Apt. 2, Brooklyn, New York 11220.

b) affixing the summons to the door at 5609 7th Avenue, Apt. 2, Brooklyn, New York 11220.

13. With personal or abode service impracticable, alternative service is the best mechanism to ensure proper service is effected on Defendant, who is evading service. Diligent inquiry has been made to determine Defendant whereabouts, and Plaintiffs have worked diligently to serve

Defendant. Defendant Arif Bashir is simply avoiding service of the process. This proposed procedure is in accord with due process and will certainly inform Defendant of these proceedings.

14. Providing the Defendant with service via first class mail and affixing the summons on the door of 5609 7th Avenue, Apt. 2, Brooklyn, New York 11220. will apprise him of the lawsuit and provide effective service.

WHEREFORE, Plaintiffs respectfully requests that this Motion be granted, and that service be allowed to be effected on Defendant Arif Bashir in the manner described in paragraph 12 above, and for any other relief deemed necessary by the Court.

/s/ **Daniel I. Schlade**

Justicia Laboral LLC
Daniel I. Schlade (Reg. No. 5916697)
Attorney For Plaintiff
Justicia Laboral, LLC
6232 N. Pulaski, #300
Chicago, IL 60646
773-550-3775
Email: dschlade@justicialaboral.com
danschlade@gmail.com

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Amilecar Chuc,

Plaintiff(s)

Court No.: 1:22-cv-05257-LDH-RML

VS.

Bell Contracting New York Inc. and Arif Bashir

Defendant(s)

AFFIDAVIT OF SPECIAL PROCESS SERVER

I, Walber Liriano,

being first duly sworn on oath depose and state as follows:

I am over the age of 18, not a party to this action, and an employee or agent of Firefly Legal, Inc., a licensed private detective agency, license number 117.001465. Following are the results of my efforts to serve summons in the above captioned case:

Type of Process: Summons in a Civil Action and ComplaintDefendant to be served: Arif BashirI ~~SERVED~~ NON-SERVED the within named defendant on: 9/15/22 @ 12:00 AM/PM (PM)ADDRESS WHERE ATTEMPTED OR SERVED: 5609 7th Avenue
Brooklyn, NY, 11220

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:

Age _____ Gender M F Race _____ Height _____ Weight _____ Hair _____ Glasses Y N_____
INDIVIDUAL SERVICE by delivering to the within named defendant a copy of this process personally. The defendant confirmed that she/he resides at the above address._____
SUBSTITUTE SERVICE by leaving a copy of this process at his/her usual place of abode with: _____,
(Relationship): _____, a family member or person residing therein who is the age of 13 years or upwards confirmed the defendant resides at the above address and informed that person of the contents thereof and that further mailed a copy of this process in a sealed envelope with postage paid addressed to the defendant at his/her usual place of abode on _____._____
CORPORATE OR GOVERNMENT SERVICE by leaving a copy of this process with _____, (Title) _____, a person authorized to accept service and informed that person of the contents thereof._____
POSTEDX NON-SERVICE for the reason that after diligent investigation foundAddress is a fish store and the defendant is unknown.

MILITARY _____

Additional Comments _____

I certify that I am a United States citizen, over the age of 18 and not a party to, nor otherwise interested in the above action.

Subscribed and sworn before me on 9/20/2022Walber Liriano
Signature of Process Server

Notary Public

SUSAN CORTINA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CO6047509
Qualified in Suffolk County
My Commission Expires 09-05-20Walber Liriano Lic# 2105938
Printed Name of Process Server

875584_4111091_0_26_V3

Page 1 of 1

File Number: 1JL090622
Reference Number: 4111091
Case Number: 1:22-cv-05257-LDH-RML
Client: Justicia Laboral, LLC
Doc Generated: 09/08/2022 10:54:28:046 AM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Amilear Chuc, Luis Velazquez, and Joel Quintanilla Madrid
Plaintiff(s)
VS.
Bell Contracting NY Inc. and Arif Bashir
Defendant(s)

Court No.: 1:22-cv-05257-LDH-RML

AFFIDAVIT OF SPECIAL PROCESS SERVER

I, DARREN PINDER, being first duly sworn on oath depose and state as follows:

I am over the age of 18, not a party to this action, and an employee or agent of Firefly Legal, Inc., a licensed private detective agency, license number 117.001463. Following are the results of my efforts to serve summons in the above captioned case:

Type of Process: Summons in a Civil Action and Amended Complaint

Defendant to be served: Arif Bashir

I SERVED/NON-SERVED the within named defendant on: 11-22-2022 @ 6:51 AM/PM

ADDRESS WHERE ATTEMPTED OR SERVED: 5609 7th Avenue, Apt. 2
Brooklyn, NY, 11220

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:

Age _____ Gender M F Race _____ Height _____ Weight _____ Hair _____ Glasses Y N

INDIVIDUAL SERVICE by delivering to the within named defendant a copy of this process personally. The defendant confirmed that she/he resides at the above address.

SUBSTITUTE SERVICE by leaving a copy of this process at his/her usual place of abode with: _____
(Relationship): _____, a family member or person residing therein who is the age of 13 years or upwards confirmed the defendant resides at the above address and informed that person of the contents thereof and that further mailed a copy of this process in a sealed envelope with postage paid addressed to the defendant at his/her usual place of abode on _____

CORPORATE OR GOVERNMENT SERVICE by leaving a copy of this process with _____ (Title)
_____, a person authorized to accept service and informed that person of the contents thereof.

POSTED

X NON-SERVICE for the reason that after diligent investigation found

11-15-2022 AT 1:50PM-METAL FRONT DOOR NO ENTRY. 11-16-2022 AT 10:31AM, UNABLE TO GAIN ENTRY. 11-19-2022 AT 6:25PM, NO ANSWER, CANNOT GAIN ENTRY

MILITARY

Additional Comments

I certify that I am a United States citizen, over the age of 18 and not a party to nor otherwise interested in the above action.

Subscribed and sworn before me on 11/23/2022

Darren Pinder
Signature of Process Server

40# 1103238

Notary Public

DARREN PINDER
Printed Name of Process Server

SUSAN CORTINA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01C06047509
Qualified in Suffolk County
My Commission Expires 09-06-24



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Page 1 of 1

File Number: 1JL000622
Reference Number: 4128132
Case Number: 1:22-cv-05257-LDH-RML
Client: Justata Laboral, LLC
Doc Generated: 11/04/2022 09:56:07:159 AM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Amilear Chuc, Luis Velazquez, and Joel Quintanilla Madrid

Plaintiff(s)

Court No.: 1:22-cv-05257-LDH-RML

VS.

Bell Contracting NY Inc. and Arif Bashir

Defendant(s)

AFFIDAVIT OF SPECIAL PROCESS SERVER

I, MOHAMED ELAZABAWY, being first duly sworn on oath depose and state as follows:

I am over the age of 18, not a party to this action, and an employee or agent of Firefly Legal, Inc., a licensed private detective agency, license number 117.001465. Following are the results of my efforts to serve summons in the above captioned case:

Type of Process: Summons in a Civil Action and Amended Complaint

Defendant to be served: Arif Bashir

I ~~SERVED~~ NON-SERVED the within named defendant on: 2-17-23 @ 2:07 AM PM

ADDRESS WHERE ATTEMPTED OR SERVED: 5609 7th Avenue, Apt. 2
Brooklyn, NY, 11220

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:

Age _____ Gender M F Race _____ Height _____ Weight _____ Hair _____ Glasses Y N

INDIVIDUAL SERVICE by delivering to the within named defendant a copy of this process personally. The defendant confirmed that she/he resides at the above address.

SUBSTITUTE SERVICE by leaving a copy of this process at his/her usual place of abode with: _____,
(Relationship): _____, a family member or person residing therein who is the age of 13 years or upwards confirmed the defendant resides at the above address and informed that person of the contents thereof and that further mailed a copy of this process in a sealed envelope with postage paid addressed to the defendant at his/her usual place of abode on _____.

CORPORATE OR GOVERNMENT SERVICE by leaving a copy of this process with _____, (Title) _____, a person authorized to accept service and informed that person of the contents thereof.

POSTED

NON-SERVICE for the reason that after diligent investigation found - NO ANSWER ON ANY ATTEMPT
UNABLE TO CONFIRM - 02-02-2023 AT 6:18PM; 02-03-2023 AT 11:58AM; 2-10-2023
AT 11:55AM; 2-11-2023 AT 10:12AM

MILITARY _____

Additional Comments _____

I certify that I am a United States citizen, over the age of 18 and not a party to, nor otherwise interested in the above action.

Subscribed and sworn before me on 2-28, 2023

Signature of Process Server

Notary Public

Mohamed Elazabawy
Printed Name of Process Server

SUSAN CORTINA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CO6047509
Qualified in Suffolk County
My Commission Expires 09-05-26



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File Number: 1JL090622
Reference Number: 4152684
Case Number: 1:22-cv-05257-LDH-RML
Client: Justicia Laboral, LLC
Doc Generated: 01/31/2023 10:49:01:944 AM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Amilcar Chuc, Luis Velazquez, and
Joel Quintanilla Madrid

Plaintiffs,

V.

Bell Contracting NY Inc. and Arif Bashir

Defendants.

Case No. 1:22-CV-5257

Plaintiffs' Attorney's Affidavit in Support of Service under NY CPLR §308 (4)

I, Daniel I. Schlade, based upon my personal knowledge, if sworn as a witness, can testify competently as follows:

1. I am over 21 years of age and do not suffer from any disabilities that would prevent me from making this affidavit; I am an attorney authorized to prosecute this matter on behalf of Plaintiff.
2. On September 2, 2022, Plaintiffs filed this action alleging they are owed unpaid overtime and other wages under the Fair Labor Standards Act (“FLSA”). Dckt. 1.
3. Upon filing of this suit, Plaintiffs issued summonses to Defendants and placed them for service. Service was attempted nine (9) times for Defendant Arif Bashir at 5609 7th Avenue, Apt 2, Brooklyn, New York 11220. Plaintiffs’ special process server was unable to serve the Defendant on September 15, 2022; November 15, 16, 19, and 22; and February 2, 3, 11 and 17. See attached Exhibit A – Affidavits of Non-Service; Ex. A is incorporated herein.
4. I have run skip traces for Defendant which yielded the same addresses that I previously had in my possession and tendered to the special process server. Repeatedly, the special process

server faced lock gates at the address and was unable to confirm any occupancy or the residency of Defendant.

5. I was able to obtain a phone number for Defendant Arif Bashir (who is the principal of Bell Contracting NY Inc.) and called on February 27, 2023. During that call, Defendant Arif Bashir confirmed to me his address (which is the same address where the process server was sent) and said that he was willing to make arrangements to accept service of process. He asked for a return phone call from me on February 28, 2023, so that he could check his calendar and make appropriate arrangements.

6. Pursuant to the above, I called Defendant Arif Bashir on February 28, 2023, to which Defendant did not answer. After that, I have texted Defendant twice at his phone number, on March 1 and March 3, 2023, in order to make arrangements for personal service. To this date, Defendant Arif Bashir has neither called back nor answered the texts.

7. Service of Defendant Arif Bashir has not been possible despite my and the special process server's innumerable attempts. Defendant Arif Bashir has full knowledge of the Complaint against him in this case, has personally spoken to me about this matter, and all of this notwithstanding, refuses to be served.

8. Federal Rule 4(e)(1) provides:

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made;

9. New York Civil Practice Law and Rules (CVP) Chapter 8, sections 308 (4) and (5) states the following regarding alternative service of process on defendants:

4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;

5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.

10. My SPS and I have exercised due diligence in attempting to serve Defendants; I have made a diligent inquiry as to the location of Defendants; reasonable efforts to serve Defendants have been unsuccessful.

11. Accordingly, Plaintiffs request leave to serve Defendants as follows:

a) Serve by first class mail to 5609 7th Avenue, Apt. 2, Brooklyn, New York 11220.

b) affixing the summons to the door at 5609 7th Avenue, Apt. 2, Brooklyn, New York 11220.

Each of these methods will ensure that Defendant receives notice of the above captioned lawsuit.

12. Plaintiff has attempted service at the Defendant's location on multiple occasions. Defendant Arif Bashir is not making himself available for service in the state of New York.

With personal or abode service impracticable, alternative service is the best mechanism to ensure proper service is effected on Defendant, who is evading service. Plaintiffs have investigated Defendant and have established that Defendant Arif Bashir lives at 5609 7th Avenue, Apt. 2, Brooklyn, New York 11220.

Diligent inquiry has been made to determine Defendant whereabouts, and Plaintiffs have worked diligently to serve them. Defendant Arif Bashir is simply avoiding service of the process.

This proposed procedure is in accord with due process and will certainly inform Defendant of these proceedings.

13. Serving Defendant by first class mail and affixing the summons at his address, comports with due process and standards of justice.

14. It has become impractical to serve Defendant Arif Bashir under NY CPLR §308 (2) and (3) because he is avoiding service of process

15. Defendant Arif Bashir is aware of the Plaintiffs' actions to obtain service upon him but is actively seeking to avoid process.

16. Diligent inquiry as to the location of the individual Defendant was made and reasonable efforts to make service have been unsuccessful as a result of his evasion of service.

17 For all of the reasons stated herein, service of Defendant Arif Bashir under NY CPLR §308 (2) and (3) is impractical at this point; as a result, Plaintiffs brings the motion for alternative service pursuant to NY CPLR §308 (4) and provides this affidavit as support.

FURTHER AFFIANT SAYETH NOT.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he believes the same to be true.

/s/ Daniel I. Schlade